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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,202	12/16/2003	Henning Gerder	71163	5742

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EXAMINER	
DOUGLAS, STEVEN O	
ART UNIT	PAPER NUMBER
3771	

MAIL DATE	DELIVERY MODE
11/14/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/737,202	GERDER ET AL.	
	Examiner	Art Unit	
	/Steven O. Douglas/	3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 September 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bahr (US 2001/0017134) in view of Applicant's Admission of Prior art (see page 7, line 9 through page 11, line 1 of Applicant's remarks filed 11/21/06, see also MPEP 2129 I for information concerning the use of an Applicant's admission as prior art).

The Bahr reference discloses a respiratory device comprising a breathing gas tube 2 including a sensor means 28, a signal line 14 (see paragraph 0019) and a contact-type interface at the distal and proximal ends (6,8) between the signal line 14 and the sensor means 28, but does not disclose the interface as being a contactless-type (i.e. infrared or inductive in make-up). Applicant's Admission of prior art states that contactless interfaces (i.e. infrared or inductive) are well known in the electrical engineering arts (see page 7, line 9 through page 11, line 1 of Applicant's remarks filed 11/21/06). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute a contactless-type interface as admitted by Applicant for the contact-type interface of Bahr, wherein so doing would amount to the mere substitution of one type of signal interface for another that would work or function equally as well (i.e. it could be reasonably stated that predicted results would be achieved) in the

Bahr device. See *also KSR International Co. v. Teleflex Inc., 550 U.S.-, 82 USPQ2d 1385 (2007)* for further support of Examiner's position.

In regard to claim 5,15 and 20, it can be reasonably stated that the wires associated with the signal line are capable of producing at least a minimal amount of heat if so desired. Furthermore, Examiner could take the position that signal exchange associated with signal line would inherently produce a minimal amount of heat.

In regard to claim 7, although the Bahr may not explicitly disclose the interface as being designed to transmit a supply voltage, Bahr does disclose the interface as being electrical in nature and Examiner takes the position that the interface would be capable of transmitting a supply voltage if so desired.

In regard to claims 11-17, the method as claimed would be inherent during normal use and operation of the combined device.

Response to Arguments

Applicant's arguments filed 9-25-07 have been fully considered but they are not persuasive. In regard to Applicant's argument that one of ordinary skill would not substitute a contactless interface (as admitted by Applicant) for the contact-type interface of Bahr because the resulting device would be much more complicated and more expensive, Examiner disagrees. Although the resulting device would be much more complicated and more expensive, the question one of ordinary skill in the art would have to ask one-self is whether the resulting device would yield predicted results and the Examiner takes the position that predicted results

would be achieved, especially in view of Applicant's admission of known contactless technology. See also Examiner's citation of *KSR International Co. v. Teleflex Inc* above.

In regard to Bahr not disclosing the limitations of claim 5,15 and 20, it can be reasonably stated that the wires associated with the signal line are capable of producing at least a minimal amount of heat if so desired. Furthermore, Examiner could take the position that signal exchange associated with signal line would inherently produce a minimal amount of heat.

In regard to Bahr not disclosing the limitations of claim 7, although the Bahr may not explicitly disclose the interface as being designed to transmit a supply voltage, Bahr does disclose the interface as being electrical in nature and Examiner takes the position that the interface would be capable of transmitting a supply voltage if so desired.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Steven O. Douglas/ whose telephone number is (571) 272-4885. The examiner can normally be reached on Mon-Thurs 6:30-5:00.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steven O. Douglas/
Primary Examiner
Art Unit 3771

SD
10-30-07